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January 8, 2016

Via ECF

The Honorable Charles R. Breyer, U.S.D.J.
United States District Court Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

**RE: *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices,
and Products Liability Litigation, MDL No. 2672 (JSC)***

Dear Judge Breyer:

This firm represents numerous economic loss plaintiffs in MDL No. 2672, all of whom filed their cases in the District of New Jersey. I respectfully submit this application for appointment to serve as one of the Plaintiffs’ Lead Counsel or Co-Lead Counsel, or to the Plaintiffs’ Steering Committee, along with my resume (Exhibit 1) and a list of those counsel supporting my appointment (Exhibit 2).

In terms of class actions regarding diesel emissions and technology, my firm, along with co-counsel, recently prosecuted a significant national MDL against a manufacturer of diesel engines which alleged that the diesel engine emissions control technology used in the engines was defective. We anticipate preliminary approval of a settlement by the end of January. I served as Liaison Counsel and one of four Lead Class Counsel in that action, which is venued in the District of New Jersey before Chief Judge Jerome B. Simandle. In addition, I am currently prosecuting class cases against PACCAR and Cummins where similar diesel engine exhaust technology is at issue. As such, I have direct in-depth knowledge of the regulatory framework regarding the emissions standards, as well as the various engine technologies manufacturers have developed to attempt to meet those standards.

I also have significant relevant experience prosecuting large national MDLs against automotive companies. I was recently honored to be one of three lawyers appointed to the PSC to prosecute, along with Co-Lead Counsel, the defective airbag litigation pending in the Southern District of Florida against Takata Corporation and many vehicle manufacturers. This is an important national case not only because of the seriousness of the underlying damage to vehicle owners and occupants, but also because of its size - it is the largest vehicle recall in our Nation’s history. My primary focus in that litigation to date has been to serve as principal liaison between the litigation team and NHTSA, which is overseeing the recall and administrative proceedings against Takata. I served as Co-Lead Counsel in MDL No. 1914 against Mercedes USA involving its Tele-Aid emergency call system, which was settled after the Third Circuit rejected Mercedes’ appeal of the Court’s certification of a national litigation class.¹

¹ Unfortunately, Judge Dickinson R. Debevoise, who presided over the *Tele-Aid* litigation, passed away in August, 2015.

The Honorable Charles R. Breyer, U.S.D.J.

January 8, 2016

Page 2

I currently serve as sole Lead Counsel in MDL No. 2353 against Pepsi-Co in litigation involving its Tropicana orange juice product. This litigation, of national importance, concerns the misbranding and mislabeling of one of the nation's largest orange juice products and, similar to this one, involves the interpretation and alleged breach of complex federal regulations, albeit in the beverage, rather than automotive, context. I am also Co-Lead Counsel in MDL No. 2631 pending in the Western District of Missouri, which involves similar allegations against Coca-Cola, the manufacturer of the Simply Orange brand juice.

I also have considerable expertise prosecuting complex pharmaceutical class actions. For example, I was Co-Lead Counsel in *In re: Vytorin/Zetia Marketing and Sales Practice Litigation*, MDL No. 1938, which concerned the manipulation of a clinical drug trial regarding the statin Vytorin. I was Liaison Counsel in the parallel securities cases. Both actions were successfully resolved through substantial settlements. I also have experience prosecuting product defect cases, including as Liaison Counsel in both *In Re: Elk Cross Timbers Decking Marketing, Sales Practices and Products Liability Litigation*, MDL No. 2577 and *In Re Azek Decking and Sales Practices Litigation*, MDL No. 2506, securities actions, including as Co-Lead Counsel in *Fernandez v. Knight Capital Group*, and *In re: Enzymotec Ltd. Securities Litigation*; and in complex antitrust cases involving the suppression of generic competition by branded pharmaceutical companies, including as chair of the Plaintiffs Executive Committee in *In re Effexor XR Antitrust Litigation*, and as Liaison Counsel in *In re: Lipitor Antitrust Litigation*.

I have the willingness and ability to commit to this important, time-consuming litigation. Importantly, my firm's practice is comprised of both contingent and hourly work. On the hourly side, I have litigated complex patent infringement cases on behalf of generic pharmaceutical companies arising under the Hatch-Waxman Act for over 15 years, and have defended a number of class actions. My firm is a founding member of the State Capital Law Group, which is comprised of firms with former state Governors as partners. As such, my firm has significant governmental relations experience both at the state and federal level that will be helpful here in working toward a global resolution of this sprawling litigation. In this regard, I also served as "States' Counsel" in *Allapattah Services, Inc. v. Exxon Corporation*, where my principal role was interfacing with, and protecting the residuary interests of, 34 State governments in the billion dollar settlement fund.

I have also developed a particular expertise in the settlement area which requires diplomatic as well as litigation skills, and which illustrates my willingness and ability to work cooperatively with other plaintiffs' counsel and defense counsel. Evidence of this experience and skill is my appointment as Settlement Liaison in *In re Aetna UCR Litigation*, MDL No. 2020. That case, a national class action involving out-of-network medical benefits, was comprised of a diverse group of plaintiffs and lawyers who were, candidly, often at war with themselves. The Honorable Faith S. Hochberg appointed me to manage the plaintiffs' litigation team in the settlement process, and to interface with both defense counsel and the Court-appointed mediator. The settlement negotiations, which took over 18 months, were ultimately successful – due in large measure to my perseverance and ability to manage the expectations and personalities of both defense counsel and plaintiffs' litigation team. These skills and experience are directly transferable and valuable to the present case.

The Honorable Charles R. Breyer, U.S.D.J.

January 8, 2016

Page 3

The names and contact information of the judges from the above matters are as follows:

In re: Vytarin/ Zetia - Hon. Dennis M. Cavanaugh, (D.N.J.) - Phone (973)425-8838

In re: Azek Decking - Hon. Madeline Cox Arleo, (D.N.J.) - Phone: (973)645-3730

In re: Elk Cross Timbers Decking - Hon. Jose L. Linares, (D.N.J.) - Phone: (973)645-6042

In re: Takata Airbag - Hon. Federico A. Moreno, (S.D. Fla.) - Phone: (305)523-5160

In re: Caterpillar C13/ C15 Engine - Hon. Jerome B. Simandle, (D.N.J.) - Phone: (856)757-5021

In re: Tropicana Orange Juice - Hon. William J. Martini, (D.N.J.) - Phone: (973)645-6340

In re: Lipitor Antitrust - Hon. Peter G. Sheridan, (D.N.J.) - Phone: (609)989-2065

In re Aetna UCR - Hon. Faith S. Hochberg, (D.N.J.) - Phone: (201)677-2378

I am willing to serve as one of the Plaintiffs' Lead Counsel(s) or on the Plaintiffs' Steering Committee(s). I seek to represent all economic loss plaintiffs and I have access to resources to prosecute this litigation in a timely manner.

In a case of this magnitude, with such national significance and impact, and with considerable geographic diversity of plaintiffs, I believe that geographic diversity of counsel is prudent. In this context, and consistent with the Panel's acknowledgement that the number of pending cases is an important factor, appointing counsel from the District of New Jersey, where more actions were filed than in any other single District, aligns with these concerns and would provide other practical benefits for the case moving forward. For example, the District of New Jersey is geographically convenient to Germany and thus depositions there, facilitated by New Jersey counsel, would reduce costs and provide efficiencies in the spirit of Rule 1. In addition, as the Court is also aware, VW is a New Jersey corporation, maintains significant relevant offices there, including the Engineering and Environmental Offices, thus providing additional reasons for the inclusion of counsel from New Jersey in the leadership structure. Finally, prior to MDL transfer, my co-counsel and I were able to effectively organize and focus the 77 cases filed in New Jersey with the unanimous consent of all the lawyers who filed cases in that District. We worked effectively, not only with New Jersey counsel, but also with counsel around the country, to achieve necessary pre-transfer benchmarks. In addition, we maintained an effective and professional working relationship with defense counsel who in fact maintains an office within two miles of our own.

As set forth in Exhibit 2, I enjoy broad national support for my application and believe that my varied range of litigation experiences - both on the defense and plaintiffs' side - makes me well suited for this appointment. I thank the Court for its consideration of my application for appointment to one of the lead counsel positions or to a steering committee, and will be able to respond to any additional questions about my qualifications or any other matter related to this case at the January 21st conference.

Respectfully submitted,

CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO

/s/ James E. Cecchi

JAMES E. CECCHI

Exhibit 1

Resume of James E. Cecchi, Esq. for a Lead Counsel or Steering Committee Position

Pursuant to this Court's Pretrial Order No. 2: Applications for Appointment of Plaintiffs' Lead Counsel and Steering Committee Members, Regarding Representation and Organization (Dkt. No. 336), James E. Cecchi, Esq. respectfully submits the following information supporting his request to be appointed as a lead counsel or to a position on the steering committee.

I. Representative MDL and Class Action Leadership Appointments

- a. Steering Committee, *In re: Takata Airbag Products Liability Litigation*, MDL No. 2599 (S.D. Fla.) (Hon. Federico A. Moreno)
- b. Liaison Counsel/Co-Lead Counsel, *In re: Caterpillar, Inc., C13 And C15 Engine Products Liability Litigation*, MDL No. 2540 (D.N.J.) (Hon. Chief Judge Jerome B. Simandle)
- c. Liaison Counsel, *In re: Schering-Plough/Enhance Securities Litigation*, (D.N.J.) (Hon. Dennis M. Cavanaugh)
- d. Liaison Counsel, *In re: Merck & Co., Inc. Vytarin/Zetia Securities Litigation*, (D.N.J.) (Hon. Dennis M. Cavanaugh)
- e. Chair, Plaintiffs' Executive Committee, *In re: Effexor XR Antitrust Litigation*, (D.N.J.) (Hon. Peter G. Sheridan)
- f. Co-Lead Counsel, *In re: Mercedes-Benz Tele-Aid Contract Litigation*, MDL No. 1914, (D.N.J.) (Hon. Dickinson R. Debevoise)
- g. Plaintiffs' Executive Committee, *In re: Rail Freight Fuel Surcharge Antitrust Litigation*, MDL No. 1969 (D.D.C.) (Hon. Paul L. Friedman)
- h. Co-Lead Counsel, *In re: Vytarin/Zetia Marketing, Sales Practices and Products Liability Litigation*, MDL No. 1938 (D.N.J.) (Hon. Dennis M. Cavanaugh)
- i. Liaison Counsel, *In re: Elk Cross Timbers Decking Marketing, Sales Practices And Products Liability Litigation*, MDL No. 2577 (D.N.J.) (Hon. Jose L. Linares)
- j. Liaison Counsel, *In re: Azek Decking Sales Practices Litigation*, MDL No. 2506 (D.N.J.) (Hon. Madeline Cox Arleo)
- k. Plaintiffs' Executive Committee, Settlement Liaison Counsel, *In re: Aetna UCR Litigation*, MDL No. 2020 (D.N.J.) (Hon. Katharine S. Hayden)
- l. Co-Lead Counsel, *In re: Tropicana Orange Juice Marketing And Sales Practices Litigation*, MDL No. 2353 (D.N.J.) (Hon. William J. Martini)
- m. Co-Lead Counsel, *In re: Simply Orange Orange Juice Marketing And Sales Practices Litigation*, MDL No. 2361 (W.D. Mo.) (Hon. Fernando J. Gaitan, Jr.)
- n. Co-Liaison Counsel, *In re: Lipitor Antitrust Litigation*, MDL No. 2332 (D.N.J.) (Hon. Peter G. Sheridan)
- o. Co-Lead Counsel, *Fernandez v. Knight Capital Group*, (D.N.J.) (Hon. Madeline Cox Arleo)
- p. Co-Lead Counsel, *Luppino v. Mercedes-Benz USA LLC*, (D.N.J.) (Hon. Jose L. Linares)
- q. Liaison Counsel, *In re: Vehicle Carrier Services Antitrust Litigation*, MDL No. 2471 (D.N.J.) (Hon. Esther Salas)
- r. Co-Lead Counsel, *In re: LG Front Loading Washing Machine Class Action Litigation*, (D.N.J.) (Hon. Madeline Cox Arleo)
- s. States' Counsel, *Allapattab Services, Inc. v. Exxon Corporation*, Case No. 91-0986-Civ-Gold. (S.D. Fla.) (Hon. Alan S. Gold)
- t. Co-Lead Counsel, *Davis Landscape v. Hertz Equipment Rental Corporation*, (D.N.J.) (Hon. Dennis M. Cavanaugh)

Resume of James E. Cecchi, Esq. for a Lead Counsel or Steering Committee Position

- u. Co-Lead Counsel, *The County of Monroe, Florida v. Priceline.com*, (S.D.Fla.) (Hon. Chief Judge K. Michael Moore)
- v. Co-Lead Counsel, *In re: Virgin Mobile USA IPO Litigation*, (D.N.J.) (Hon. Susan D. Wigenton)
- w. Co-Lead Counsel, *Sampang, et al. v. AT&T Mobility LLC, et al.*, (D.N.J.) (Hon. Jose L. Linares)
- x. Co-Lead Counsel, *Simon v. KPMG*, (D.N.J.) (Hon. Dennis M. Cavanaugh)
- y. Co-Lead Counsel, *Treasurer v. AOL Time Warner, Inc.*, Docket No. MER-L-1349-03 (N.J. Superior Court)
- z. Co-Lead Counsel, *Franco v. Connecticut General Life Insurance*, (D.N.J.) (Hon. Stanley R. Chesler)

II. Qualifications to Serve

I am a partner of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. and concentrate my practice on complex litigation, including the prosecution of class actions. I graduated from Colgate University in 1986, with honors, and Fordham University School of Law in 1989. Following law school, I clerked for the Honorable Nicholas H. Politan (1935-2012) in the United States District Court for the District of New Jersey from 1989 until 1991. Following my clerkship, I served in the United States Department of Justice from 1991-1994 as an Assistant United States Attorney for the District of New Jersey, after which I joined my present firm. I am a member of the New Jersey, New York and Pennsylvania bars and am admitted to practice in the District Courts for the District of New Jersey and the Southern and Eastern Districts of New York, the Courts of Appeal for the Second and Third Circuits, and the U.S. Supreme Court. I am a trustee of the U.S. District Court Historic Society. My firm currently has 30 lawyers and has the financial resources to undertake this important assignment.

III. Experience in Other Technical Litigation

My firm's team has unique skills and experience that benefit our clients in complex technical litigation. By way of example only, a number of the attorneys at Carella, Byrne are registered to practice before the U.S. Patent and Trademark Office and several have degrees and experience in chemical, electrical, mechanical and biomedical engineering, which may benefit the plaintiffs, my co-counsel, and the Court in this litigation. Representative cases include: *Aventis v. Teva Pharmaceuticals*, Civil Action No. 07-2454 (JAG) (Allegra); *Schering v. Ivax Corporation*, Civil Action No. 00-2931 (Claritin); *Eli Lilly and Co. v. Actavis Elizabeth LLC et. al.*, Civil Action No. 07-770; *Connetics v. Agis Industries*, Civil Action No. 05-5038 (GEB) (Olux); *Merck & Co. v. Apotex*, Civil Action No. 06-5789 (MLC) (Trusopt); *Janssen Pharmaceutica v. Apotex*, Civil Action No. 06-1020 (DMC) (Risperidone); *Cephalon v. Mylan Pharmaceuticals, et al.*, Civil Action No. 03-1394 (JCL) (Provigil); *Celgene Corp. v. Barr Laboratories*, Civil Action No. 07-286 (SDW) (Thalomid); *Novartis Corp., et al. v. Lupin Ltd.*, Civil Action No. 06-5954 (HAA); *Savient Pharmaceuticals v. Sandoz, et al.*, Civil Action No. 0605782 (PGS) (Oxandrolone).

Exhibit 2

In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation,
MDL No. 2672 (JSC) – List of counsel supporting the application of James E. Cecchi, Esq.

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